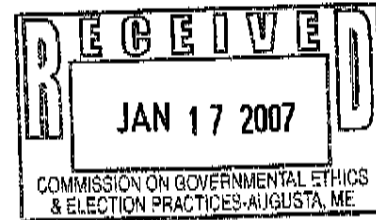


Agenda

Item #11

1.15.07

Clean Elections Commission
Augusta, ME



Dear Commission:

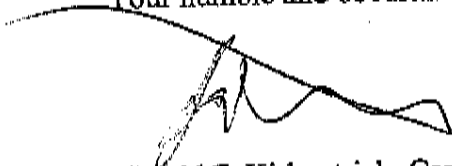
I do not agree with the preliminary determination of the Commission staff. I am requesting a formal determination by the Commission.

I mailed my 42-Day Post-General campaign finance report in Freeport ME on Monday AM December 18 with the expectation that the United States Postal Service would be able to deliver it in Augusta on December 19. The post office failed. I apologize for having such high expectations for the post offices ability to deliver the mail in a timely manner.

I was a replacement candidate. I lived around the campaign for three months. After the election I needed to spend time on my personal affairs. It wasn't til December 16 that I was able to get back to my campaign. I completed the paperwork on Saturday December 17 but there was no mail pick up until Monday. I was in Freeport on Sunday and mailed the report on Monday. If I knew that the postal service would not be able to deliver the report on time I would of kept it until I reached Augusta and delivered it by hand..

I hope the commission will take into consideration the public service I provided the voters in my district by coming forward as a replacement candidate at the final hour.

Your humble and obedient servant



David F. Kirkpatrick, Candidate
State Representative, District 12

Title 21-A, §1020-A, Failure to file on time

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§1020-A. Failure to file on time


1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.
[1995, c. 483, §15 (new).]

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §5 (amd).]

B. An error by the commission staff; [1999, c. 729, §5 (amd).]

C. Failure to receive notice of the filing deadline; or [1999, c. 729, §5 (amd).]

 D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service. [1999, c. 729, §5 (new).]
[2003, c. 628, Pt. A, §3 (amd).]

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.
[1995, c. 625, Pt. B, §5 (amd).]

4. Basis for penalties.

[2001, c. 470, §7 (amd); T. 21-A, §1020-A, sub-§4 (rp).]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

B. For the 2nd violation, 3%; and [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

Title 21-A, §1020-A, Failure to file on time

C. For the 3rd and subsequent violations, 5%. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

* A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

[2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

5. Maximum penalties.

[2001, c. 470, §8 (amd); T. 21-A, §1020-A, sub-§5 (rp).]

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D or F; section 1017, subsection 4; and section 1019-B, subsection 3; [2003, c. 448, §4 (amd).]

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; [2003, c. 628, Pt. A, §4 (amd).]

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; [2003, c. 628, Pt. A, §4 (amd).]

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or [2003, c. 628, Pt. A, §4 (amd).]

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report. [2001, c. 714, Pt. PP, §1 (new); §2 (aff).]

[2003, c. 628, Pt. A, §4 (amd).]

6. **Request for a commission determination.** Within 3 days following the filing deadline, a notice must be forwarded to a candidate and treasurer whose registration or campaign finance report is not received by 5 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 4 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. Any request for a determination must be made within 10 calendar days of receipt of the commission's notice. The 10-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

[RR 1995, c. 2, §38 (cor).]

7. **Final notice of penalty.** After a commission meeting, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the treasurer.

If no determination is requested, the commission staff shall calculate the penalty as prescribed in subsection 4-A and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

[RR 2003, c. 1, §14 (cor).]



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

January 4, 2007

Mr. David F. Kirkpatrick
319 Enfield Rd.
Lincoln, ME 04457

BY CERTIFIED MAIL

Dear Mr. Kirkpatrick:

RE: Late 42-Day Post-General Campaign Finance Report Due 12/19/2006.

You filed a 42-Day Post-General campaign finance report on 12/20/2006. A penalty must be assessed for late reports based on the amount of financial activity conducted during the filing period, the number of calendar days a report is filed late, and the candidate's filing record. Based on the prescribed statutory formula, the preliminary determination of the penalty for the late filing of your report would be \$14.79. Please refer to the enclosed penalty matrix for more details on how the penalty is computed. If you agree with this preliminary determination of the amount of the penalty, you may use the enclosed billing statement to pay that penalty.

If you have a reason for filing late, you may request the Commission to make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receipt of this notice, beginning on the day you sign its receipt. If this notice has been refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. Upon receipt of your request for a Commission determination, we will schedule you to appear and will notify you of the date and time of the next Commission meeting. You or a person you designate may then appear personally before the Commission or you may send a written statement for the Commission's consideration. A statement must be notarized and contain a full explanation of the reason you filed late. Statements should be sent to the address shown on this letterhead. The Commission will notify you of the disposition of your case within 10 days after its determination.

NOTE: The Commission may waive penalties for late reports only in cases where tardiness is due to mitigating circumstances. The law defines "mitigating circumstances" as: 1) a valid emergency determined by the Commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; 2) an error by the Commission staff; 3) failure to receive notice of the filing deadline; or (4) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that a *bona fide* effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

The Maine Clean Election Act requires all revenues distributed to certified candidates from the fund to be used for campaign-related purposes. Commission guidelines regarding permissible campaign-related expenditures do not include the payment of a penalty as a permissible expenditure.

Sincerely,

Gavin O'Brien
Candidate Registrar

cc: Treasurer

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE CANDIDATE REPORT FILINGS

BASIS FOR PENALTIES

21-A M.R.S.A. Section 1020-A(4)

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

A penalty begins to accrue at 5:00 p.m. on the day the report is due.

Example: The treasurer files the candidate's report two (2) days late. The candidate has not had any previous late violations this biennium. The candidate reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

| | |
|--------------|--|
| \$2,500 | Greater amount of the total contributions received or expenditures made during the filing period |
| <u>X .01</u> | Percent prescribed for first violation |
| \$25.00 | One percent of total contributions |
| <u>X 2</u> | Number of calendar days late |
| \$50.00 | Total penalty |

Your penalty is calculated as follows:

| | |
|--------------------------------|-------------------|
| Contributions/Expenditures: \$ | <u>\$1,478.51</u> |
| Percent prescribed: | <u>0.01</u> |
| | \$ <u>\$14.79</u> |
| Number of days late: | <u>X 1</u> |
| Total penalty accrued: | \$ <u>\$14.79</u> |

Any penalty of less than \$5 is waived.

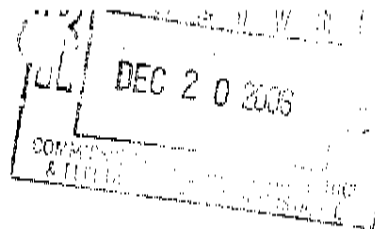
Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1020-A(5)

\$5,000 for reports required to be filed 42 days before an election (gubernatorial candidate only),
6 days before an election, 42 days after an election, and for 48-hour reports;
\$1,000 for semiannual reports.



For Commission
use only

data entry

proofread

follow-up

ER

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333-0135
Office: 242 State Street, Augusta, Maine
Tel: (207) 287-4179 Fax: (207) 287-6775
Website: www.maine.gov/ethics
Electronic Filing: www.maine.campaignfinance.com

2006 CAMPAIGN FINANCE REPORT
MAINE CLEAN ELECTION ACT CANDIDATES
FOR THE LEGISLATURE

(Please Complete ALL Entries)

Name of CANDIDATE

DAVID F. KIRKPATRICK

Mailing address

319 ENFIELD RD

City, zip code

LINCOLN, ME 04457

Telephone number

794 6981

Fax

E-mail

dfk926@msn.com

Office Sought

STATE REPRESENTATIVE

District Number

12

Name of TREASURER

JOAN R. KIRKPATRICK

Mailing address

319 ENFIELD RD

City, zip code

LINCOLN ME 04457

Telephone number

794 6981

Fax

E-mail

jckr@verizon.net

CHECK IF CHANGED
SINCE PREVIOUS
REPORT ☐

CHECK IF CHANGED
SINCE PREVIOUS
REPORT ☐

Type of ReportDue DateDates of Reporting Period☐ 6-Day Pre-Primary

June 7, 2006

Last report (if any) - June 1, 2006

☐ 42-Day Post-Primary

July 25, 2006

June 2, 2006 - July 18, 2006

☐ 6-Day Pre-General

November 1, 2006

July 19, 2006 - October 26, 2006

☒ 42-Day Post-General

December 19, 2006

October 27, 2006 - December 12, 2006

☐ Amendment to: _____☐ Other (specify): _____☐ Check if campaign had no activity for the reporting period (no other pages are required)

I CERTIFY THAT I HAVE EXAMINED THIS REPORT AND TO THE BEST OF MY KNOWLEDGE IT IS TRUE, CORRECT AND COMPLETE.

Joan R. Kirkpatrick
Treasurer's Signature

12.17.06

Date

[Signature]

Candidate's Signature

12.17.06

Date